

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

1. **CRR No.2075 of 2015 (O&M)**  
**Date of Decision: 06.04.2017**

**Rashpal Singh** **.....Petitioner**  
**Vs**  
**State of Punjab and another**  
**....Respondents**

2. **CRR No.2064 of 2015 (O&M)**

**Harinderjeet Singh** **.....Petitioner**  
**Vs**  
**State of Punjab and another**  
**....Respondents**

3. **CRR No.2624 of 2016 (O&M)**

**State of Punjab** **.....Petitioner**  
**Vs**  
**Mohan Lal**  
**....Respondent**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. P.S. Ahluwalia, Advocate  
for the petitioner in CRR No.2075 of 2015.

Mr. Angel Sharma, Advocate  
for the petitioner in CRR No.2064 of 2015 and  
for respondent No.2 in CRR No.2075 of 2015.

Mr. P.S. Ghuman, Addl. A.G., Punjab.

Mr. H.S. Gill, Advocate  
for respondent No.2 in CRR No.2064 of 2015 and  
CRR No.2624 of 2016.

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**RAJ MOHAN SINGH, J.**

[1]. Vide this common order CRR Nos.2075 and 2064 of

2015 and CRR No.2624 of 2016 are being disposed of as all the petitions have arisen out of common cause of action.

[2]. Common order dated 20.04.2015 passed by Additional Sessions Judge, SAS Nagar Mohali has been assailed in CRR No.2075 of 2015 vide which petitioner-Rashpal Singh was summoned under Section 319 Cr.P.C., as additional accused under Sections 302, 307 IPC to face trial along with accused Amritpal Singh and CRR No.2064 of 2015 and CRR No.2624 of 2016 have been preferred against the aforesaid order whereby the application under Section 319 Cr.P.C., for summoning HC Mohan Lal as an additional accused was dismissed.

For brevity, facts are being culled out from CRR No.2075 of 2015.

[3]. Brief facts of the case are that an FIR No.94 dated 24.06.2014 under Sections 302, 307, 148, 149 IPC was registered at the instance of Harinderjeet Singh to the effect that he was recruited as a constable in Punjab Police and at the time of lodging the FIR his duty was in Phase 8, Mohali. Amritpal Singh was resident of Phase 9, Mohali and he was also serving in the Punjab Police. Amritpal Singh was the friend of the complainant. Complainant became friend with one Amandeep Kaur, lady constable, who was posted in CIA, Kharar.

[4]. Complainant alleged that he being married, wanted to get rid of Amandeep Kaur, but Amritpal Singh was having some doubt that the complainant was still taking interest in Amandeep Kaur. On 23.06.2014, at about 8.30 p.m., the complainant and Amritpal Singh came to the house of HC Mohan Lal, who was living in Phase 8 Mohali. They started eating and drinking there. The family of Mohan Lal had gone to village, therefore, the complainant was sent to Dhaba for bringing food. Complainant came back after bringing the food from Pal Dhaba, Phase 9 Mohali. But thereafter, they started asking that they want '*tawe wali chapati*' from Pal Dhaba. Complainant was returning on feet. At about 11.00 p.m., when the complainant reached near the lights of Sector 68/69, then Amritpal Singh and Mohan Lal were already standing there in the vehicle of Mohan Lal. They started getting upset with the complainant. Amritpal Singh started entering into scuffle with the complainant. Complainant got himself freed from there and started coming towards his house. He called his brother Sonu by informing him that Amritpal Singh etc. are fighting with him.

[5]. At some distance, Sonu met him. Amritpal Singh was abusing the complainant loudly and then Sonu tried to persuade him as both were friends and Sonu took the complainant along with him and went near Amritpal Singh, who was standing near

the lights. Sonu tried to make him understand as to why he was abusing. In the meanwhile, suddenly about 4-5 boys appeared there and all of them attacked them. Amritpal Singh was holding a *kirch* in his hand and he at once attacked on the complainant with an intention to kill him. The complainant warded off the attack by his both hands in his defence, but Amritpal Singh attacked several times on the person of the complainant in a life threatening manner.

[6]. One of the blow, landed on his left arm near his wrist. One blow hit him on the thumb of his right hand. Another blow hit him on the finger of his right hand. Brother of the complainant, Sonu was held from his arms by Mohan Lal and two other boys. The other remaining persons attacked him. Amritpal Singh at once left the complainant and then gave *kirch* blow on the chest of Sonu. Amritpal Singh again attacked on the chest of Sonu. Both time, he hit *kirch* blows on the chest of Sonu. As a result of that, Sonu smeared in the pool of blood and fell down. Complainant was badly injured. On being raised alarm, PCR vehicle reached the spot and removed the injured to Fortis Hospital for treatment. Sonu died on reaching the hospital.

[7]. Complainant alleged that the incident had happened due to planned conspiracy of Amritpal Singh and Mohan Lal.

Complainant further alleged that he can identify the remaining attackers on seeing them. In the concluding part of the FIR, it was recorded that amongst the accused persons father of Amritpal Singh namely Rashpal Singh was also present, who was having a sword. No overt act was attributed to Rashpal Singh in FIR and he was only shown present along with sword.

[8]. Police investigated the case and filed report under Section 173 Cr.P.C. on 15.09.2014. In the challan, it was noticed that during the investigation accused Mohan Lal and Rashpal Singh submitted application in respect of their innocence to Sr. Superintendent of Police, Mohali which was inquired into by S.P. (D), Mohali. In the inquiry, Mohan Lal and Rashpal Singh were found to be innocent. The names of 4-5 boys in the incident were also not found involved in the quarrel.

[9]. A cross case was registered by Amritpal Singh against Harjinderjit Singh and Manjinder Singh and DDR No.14 dated 24.06.2014 under Sections 323, 325, 34 IPC which was ordered to be cancelled by the S.P. (D) Mohali. After completion of investigation, challan was presented against Amritpal Singh for the offence under Section 302 IPC.

[10]. Thereafter, an application under Section 193 of the Code of Criminal Procedure was filed by the complainant on

22.10.2014 against the accused shown in column No.2 of the challan. Prayer was made for summoning them to stand trial along with the main accused Amritpal Singh.

[11]. The said application was dismissed by the Additional Sessions Judge, SAS Nagar, Mohali vide order dated 31.10.2014 on the ground that no role was attributed to Rashpal Singh father of Amritpal Singh except one line insertion in the FIR that he was present with *kirpan* at that time. The said innocuous allegation was not found sufficient to constitute a sufficient material for summoning for Rashpal Singh as an additional accused. In respect of Mohan Lal it was noticed that his name was mentioned only in the initial statement of the complainant, but no injury was attributed to him, nor any allegation of connivance with the co-accused Amritpal Singh was made. The complicity of Mohan Lal was also negated and the application was dismissed.

[12]. The said order dated 31.10.2014 was assailed by the complainant in CRR No.3693 of 2014 on 05.11.2014. In the said petition, the complainant/petitioner alleged that despite the opinion given by the Assistant District Attorney vide report dated 16.09.2014, the same was ignored on the basis of report of S.P. (D) Mohali and challan was presented. The Police was out and out to help the accused persons and the complainant was

removed from the Fortis Hospital by S.P. (D) Mohali just to help the accused persons. Reference to DDR No.14 dated 24.06.2014 was made and the same was alleged to be the result of connivance of S.P. (D) and the S.H.O. just to make a cross case against the complainant. When the Police came to know that brother of the complainant had died, the Police cancelled the DDR thereafter.

[13]. The aforesaid CRR No.3693 of 2013 was dismissed by this Court vide order dated 17.11.2014. However the said order was held not to be prejudicial to the trial Court in reconsideration of summoning of the additional accused at appropriate stage of proceedings. Upto this stage, there was no overt act on the part of Rashpal Singh except the allegation that he was found standing at the spot along with a *kirpan*.

[14]. Complainant Harinderjeet Singh appeared as PW-1 during prosecution evidence. In his cross-examination, he reiterated the stand that Rashpal Singh was also present at the spot along with a *kirpan*. He also narrated that when his statement was read over he told it to the Police that the role played by Rashpal Singh was not reproduced in it, but the Police merely mentioned the name of the Rashpal Singh in the last line and he affixed his signature under duress.

[15]. Cross-examination of the complainant was deferred on the request of learned counsel for the accused on 20.02.2015. Thereafter on 11.03.2015, complainant Harinderjeet Singh was recalled for examination-in-chief. As per the material on record, it cannot be ascertained as to whether he was called for further examination-in-chief under the orders of the Court or otherwise. On his recalling for further examination-in-chief, the witness narrated in the following manner:-

*“While my brother was reasoning out with Amritpal, in the meantime, his father Rashpal Singh, along with 4-5 persons carrying kirpans reached at the spot. Rashpal Singh and his accomplices also inflicted injuries on the person of my brother Manjinder Singh. In this regard I made supplementary statement before SP(D) Mohali.”*

[16]. On the strength of aforesaid material in the form of cross-examination, an application under Section 319 Cr.P.C., was filed before the Additional Sessions Judge, SAS Nagar, Mohali, which was accepted *qua* Rashpal Singh by observing that in view of DDR No.14 dated 24.06.2014, when a cross-case was sought to be registered against the complainant-party by Amritpal Singh, the complicity of Rashpal Singh therein cannot be discarded as his presence was duly acknowledged in the aforesaid DDR. The Additional Sessions Judge, SAS Nagar

Mohali accepted the application to the extent of summoning Rashpal Singh as additional accused to face trial along with Amritpal Singh, but rejected the application *qua* Mohan Lal.

[17]. I have considered the submissions made at the bar.

[18]. Learned counsel for the petitioner-Rashpal Singh submitted that in **Kishun Singh vs. State of Bihar, 1993(1), RCR (Criminal) 647** the Hon'ble Apex Court has explained the the scope of Sections 193 and 319 Cr.P.C. Under Section 193 Cr.P.C., the Court can summon a person as an accused on the basis of material placed on record upto the stage of report under Section 173 Cr.P.C. and without recording any further evidence. Whereas, under Section 319 Cr.P.C, the Court can summon a person to face trial, whose involvement comes to fore during the trial after recording evidence of the prosecution witness.

[19]. Learned counsel for the complainant-Harinderjeet Singh (petitioner in CRR No.2064 of 2015) strongly emphasized that in view of nature of injuries on the person of the deceased, the complicity of the petitioner-Rashpal Singh cannot be ignored as seven injuries were found on the person of the deceased and there is no bar, even after dismissal of application under Section 193 Cr.P.C., for taking cognizance by the Court in terms of

Section 319 Cr.P.C.

[20]. The aforesaid judgment of the Hon'ble Apex Court was over ruled in **Ranjit Singh vs. State of Punjab, 1998(4) RCR (Criminal) 552**. The judgment rendered in **Ranjit Singh** and **Kishun Singh's** cases (supra) were again considered by the Constitutional Bench of the Hon'ble Apex Court in **Dharampal and ors. vs. State of Haryana and another, 2013(3) RCR (Criminal) 787**. The Hon'ble Apex Court over ruled the judgment rendered in **Ranjit Singh's** case (supra) and approved the judgment rendered in **Kishun Singh's** case (supra). The scope of Section 193 Cr.P.C., was interpreted to the effect that there must be a committal of the case to the Court of Session by the Magistrate and thereafter the Court of Session is to take cognizance of the offence by exercising its original jurisdiction, if the case is exclusively triable by the Court of Sessions. If the Magistrate on the basis of police report was convinced that a *prima facie* case is made out against the person, then the Magistrate has power to disagree with the police report and summon the person on the basis of police report without holding any inquiry under Sections 190 and 200 Cr.P.C. Magistrate has role to play while committing the case to the Court of Sessions. If the Magistrate decides the proceeding against the accused, he would have to proceed on the basis of

police report itself or either inquire into the matter or commit the same to the Court of Session, if the same found to be triable by the Court of Session.

[21]. If in an offence triable by the Court of Session, the Police after investigation submits its final report to the Magistrate and the person who is found to be innocent during the investigation of the case after committal of the case can be summoned under Section 193 Cr.P.C., by the Court of Sessions having original jurisdiction on the basis of record transmitted to it as a result of whole order passed by the Magistrate. In such an event, the Court of Session is not to wait till stage indicated under Section 319 Cr.P.C. In nutshell, the Court of Session can summon a person as an accused under Section 193 Cr.P.C., on the basis of material during course of investigation and after committal of case to the Court of Session by the Magistrate, whereas Section 319 Cr.P.C., can only be invoked on the basis of evidence collected during the course of the trial.

[22]. In the instant case, upto the stage of filing the application under Section 193 Cr.P.C., the factum of the petitioner-Rashpal Singh being found present with the *kirpan* was alleged as a matter of fact. The factum of DDR No.14 dated 24.06.2014 was also considered as reference of which was given by the complainant Harinderjeet Singh in para No.8 of the

ground of the crl. revision petition No.3693 of 2014. The factual incriminating role of the petitioner was pleaded in the FIR. Reference of the same was duly found in the report under Section 173 Cr.P.C. The application under Section 193 Cr.P.C. was dismissed even upto the stage of crl. revision petition No.3693 of 2014 in which reference of DDR No.14 dated 24.06.2014 was specifically pleaded.

[23]. From the aforesaid, it can be taken note of that before start of the evidence, the material collected by the Police was inclusive of the aforesaid DDR and the said fact was considered by the trial Court as well by this Court in the said crl. revision petition and prayer of the complainant in terms of Section 193 Cr.P.C., was declined.

[24]. During the course of recording prosecution evidence, presence of the petitioner-Rashpal Singh at the time of occurrence, with *kirpan* was pleaded in the cross-examination of the complainant Harinderjeet Singh. The said fact was not elaborated further, when the case was deferred for cross-examination of the witness on 20.02.2015. The case was further taken up for further examination-in-chief of the witness without making any reference of order of the Court, whether such permission was granted or otherwise. Thereafter, the improvement was made in the examination-in chief on

11.03.2015 that the petitioner-Rashpal Singh along with 4-5 persons carrying *kirpan* reached at the spot and they also inflicted injuries on the person of brother of the complainant. The perusal of the aforesaid statement did not give any specific role to the petitioner-Rashpal Singh except to allege that the petitioner along with 4-5 persons carrying *kirpan* inflicted injuries on the person of the deceased.

[25]. It is significant to note that even the role of Rashpal Singh was pleaded to be at par with those 4-5 persons, who collectively along with Rashpal Singh allegedly gave injuries to Manjinder Singh. Aforesaid 4-5 persons were found to be innocent during the investigation. No application was filed *qua* the aforesaid 4-5 persons either under Sections 193 or 319 Cr.P.C. In this way, the role of the petitioner-Rashpal Singh cannot be extended firstly in the light of dismissal of the application under Section 193 Cr.P.C, when the factum of his complicity in terms of DDR No.14 was duly highlighted in those proceedings. Secondly, even as per the testimony of PW-1 the cross-examination of the witness remained at par with the role ascribed to Rashpal Singh upto the stage of culmination of proceedings under Section 193 Cr.P.C. and proceedings upto this Court and upto the stage when cross-examination of the witness was deferred on 20.02.2015. Thirdly, even as per the

examination-in-chief of the witness, the role of Rashpal Singh was pleaded at par with those 4-5 persons, who were found to be innocent during course of investigation. No application *qua* the complicity of aforesaid 4-5 persons was ever moved either under Sections 193 or 319 Cr.P.C.

[26]. In **Hardeep Singh vs. State of Punjab, 2014(1) RCR (Criminal) 623**, the powers under Section 319 Cr.P.C., has been held to be discretionary and extra ordinary powers. These powers are required to be exercised very sparingly only in those circumstances where circumstances of the case so warrants. These powers are not be exercised because the Magistrate or the Court of Session is of the opinion that some other person may also be guilty of committing of that offence. Only where strong and cogent evidence comes against the person from the evidence led before the Court, such power should be exercised and not in a casual manner. The requirement of law is that the evidence led before the Court is not necessary to be decided on the anvil of cross-examination. Only requirement is that of much stronger evidence, than mere probability of the complicity of the person. The requirement is of more than *prima facie* case as required for framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted would lead to conviction. In the absence of such satisfaction, the Court should

refrain from exercising powers under Section 319 Cr.P.C.

[27]. In the instant case, if the aforesaid principle is applied, in my considered view that would not lead to any conviction, if the same remains unrebutted. Firstly, the Court did not consider the case to be on *prima facie* note at the time of rejection of application under Section 193 Cr.P.C. Even, though the factum of DDR No.14 dated 24.06.2014 was specifically brought to the notice of the Court. Secondly, upto the stage of examination-in-chief of the complainant, there was no improvement in the prosecution case from the material so collected by the prosecution in the report under Section 173 Cr.P.C. It is only in second attempt improvement was sought to be made even, though the case was adjourned for cross-examination of the witness. In the second attempt as well, the complicity of the petitioner-Rashpal Singh was alleged only at par with those 4-5 persons, who were found innocent in the report under Section 173 Cr.P.C., and no application in terms of Section 193 Cr.P.C. was moved against them nor they were sought to be summoned under Section 319 Cr.P.C.

[28]. In view of aforesaid factual position, the ratio as held in **Hardeep Singh's** case (supra) would come to fore to negate the intended exercise on the part of the complainant.

[29]. On the basis of aforesaid factual and legal position on record, I deem it appropriate to quash the order order 20.04.2015 whereby petitioner-Rashpal Singh was ordered to be summoned as additional accused to face trial along with Amritpal Singh. Since against HC Mohal Lal, no such material has come even after leading evidence by PW-1, therefore, situation *qua* him remains the same, even at the stage of 193 Cr.P.C. and at the time of filing of application under Section 319 Cr.P.C.

[30]. Consequently CRR No.2075 of 2015 is allowed and the CRR No.2064 of 2015 and CRR No.2624 of 2016 are hereby dismissed.

April 06, 2017

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No